S.B. CIVIL WRIT PETITION NO. 727/2005.
(GATTU LAL Vs. STATE OF RAJASTHAN & Ors.)

DATE OF ORDER : 29.01.2007.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Arvind Shrimali for Mr. D.D. Thanvi, for the petitioner
Mr. B.L. Tiwari, Dy.Government Advocate, for the respondents

By this petition for writ, a direction is sought by the petitioner for respondents to grant promotion to him to the post of Lower Divisional Clerk from the post of Class-IV employees in accordance with the provisions of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (for short 'the Rules of 1957').

In brief, facts of the case are that the petitioner entered in the services of the respondents being appointed as a Class IV employee in the year 1979. While in service he qualified Secondary School Examination, 1987 conducted by the Board of Secondary Education Rajasthan. According to the petitioner though an application was submitted by him seeking privilege leave from 12.3.1987 to 6.4.1987 to undergo the Secondary Level Studies and also to appear in the examination concerned but that was not forwarded by the office concerned to the competent authority of the respondent and therefore, the fact about acquiring the qualification of Secondary School

Examination was not entered in service record of the petitioner. It is also stated that the petitioner immediately after obtaining the Secondary School Examination Certificate communicated the respondents about his qualification and therefore, the grievance sought to be redressed by this petitioner is that the respondents by an order dated 30.7.1990 promoted about 10 persons shown junior to the petitioner in the seniority list pertaining to Class IV employees published on 24.3.1986, ignoring his claim by treating him a person not having requisite qualification.

A reply to the writ petition has been filed on behalf of the respondents stating therein that though the petitioner qualified Secondary School Examination, 1987 and privilege leave was granted to him for the period commencing from 12.3.1987 to 6.4.1987 but the petitioner obtained the qualification concerned without sanction of the competent authority and therefore, that was not taken into consideration for according promotion as Lower Divisional Clerk.

Heard counsel for the respondent.

The petitioner admittedly acquired Secondary School Examination Certificate in the year 1987, as such in accordance with the provisions of the Rules of 1957 he was eligible to be

considered for the purpose of promotion to the post of Lower Divisional Clerk, on 30.7.1990 the day on which promotions were given to the persons junior to him (respondents No. 4 to 13). The respondents denied promotion to the petitioner on the count that he acquired the qualification of Secondary School Examination without sanction. The requirements of Rules of 1957 is that a Class IV employee with the qualification of Secondary School Examination Certificate is eligible to be considered for promotion to the part of Lower Divisional Clerk. The petitioner certainly possessed the qualification aforesaid, as such, under the Rules of 1957 he was eligible to be considered for promotion as Lower Divisional Clerk. The question as to whether qualification referred above was acquired with or without prior approval of the department does not obliterate the fact about acquiring the qualification and eligibility of the petitioner. Undergoing studies without sanction may be any issue for taking disciplinary action against the petitioner but certainly not to decide his eligibility to be considered for promotion. The respondents, therefore, erred while not recording the qualification acquired by the petitioner that is of Secondary School Examination in his service record and while not considering the petitioner for promotion to the part of Lower Divisional Clerk.

In result the petition for writ deserves acceptance, the same is accordingly allowed. The respondents are directed to consider the candidature of the petitioner for the purpose of promotion to the post of Lower Divisional Clerk against the vacancies for which the candidature of the respondents No. 4 to 13 was considered and promotion was accorded to them under the order dated 30.7.1990. If the petitioner is otherwise found suitable he be promoted as Lower Divisional Clerk from the date it was accorded to the respondents No. 4 to 13.

(GOVIND MATHUR)J.

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